

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 413 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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BAI JASUD WIDOW OF KANTILAL ALIAS FULCHAND ANOPCHAND

Versus

RATILAL ANOPCHAND SHAH

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Appearance:

Shri V.C.Desai, Advocate, for the Petitioners.

Shri M.J.Thakore, Advocate, for the Respondents.

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CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 09/08/96

ORAL JUDGEMENT

Can a subordinate Court be permitted to read a judgment of its superior Court differently and in a twisted manner so as to assign a meaning altogether different from its apparent meaning on the face of it? Will such attempt on the part of such subordinate Court

not amount to destruction of judicial discipline and contempt of its superior Court? These questions come in the forefront in the context of the challenge to the order passed by the Appellate Bench of the Small Causes Court on 24th February 1994 below the application at Exhibit 68 in Regular Civil Appeal No.379 of 1976 in this revisional application under section 29 (2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (the Act for brief) read with section 115 of the Code of Civil Procedure, 1908. By the impugned order, the learned Judges of the Appellate Bench of the Small Causes Court directed both the parties to argue the entire appeal on all grounds after ordering the application to be decided along with the appeal.

2. The facts giving rise to this application move in a narrow compass. The petitioners are the heirs and legal representatives of the original tenant and the respondents are the heirs and legal representatives of the original landlord. For the sake of convenience I shall refer to the petitioners as the tenant and the respondents as the landlord. The landlord filed a suit in the Small Causes Court at Ahmedabad for eviction of the tenant on several grounds. It came to be registered as H.R.P.Suit No.709 of 1970. Several grounds were urged. The learned trial Judge dismissed the suit for possession. The landlord carried the matter in appeal. It came to be registered as Regular Civil Appeal No.379 of 1976. In appeal, an additional ground was pressed into service for the purpose of recovery of possession from the tenant and that ground was acquisition of a suitable accommodation by the tenant within the meaning of section 13 (1) (1) of the Act. The Appellate Bench did not accept any of the grounds for eviction of the tenant but passed the decree of eviction in favour of the landlord on the ground of disclaimer of the title of the landlord on the part of the tenant. The aggrieved tenant thereupon invoked the revisional jurisdiction of this court under section 29 (2) of the Act. The proceeding came to be registered as Civil Revision Application No.519 of 1980. By the judgment rendered on 15th July 1992 in the aforesaid revisional application, this court set aside the judgment and order passed by the Appellate Bench of the Small Causes Court and remanded the matter to it for deciding the issue of the disclaimer of the title of the landlord with respect to the rented premises. A copy of the aforesaid judgment of this court is at Annexure-A to this application. Pursuant thereto, the appeal before the Appellate Bench of the Small Causes Court was restored to file. It framed the necessary issue and remanded the matter to the trial court for

deciding the issue after giving an opportunity of hearing to the parties including an opportunity to bring on record certain other material. Its copy is at Annexure-B to this application. It appears that the decision on the issue was received from the trial court by the Appellate Bench. It appears that the appeal was heard also for some time. On behalf of the petitioners herein, an application was made on 24th February 1994 requesting the Appellate Bench to confine arguments on the issue of disclaimer of the title of the landlord by the tenant. It came to be taken on record as Exhibit 68 in Regular Civil Appeal No.379 of 1976. By the order passed therebelow on 24th February 1994, the learned Judges of the Appellate Bench ordered hearing of the application with the appeal with a direction to both the parties to argue the entire appeal on all grounds. That aggrieved the present petitioners. They have therefore invoked the revisional jurisdiction of this court under section 29 (2) of the Act for questioning its correctness.

3. It would be quite proper to look at the judgment of this court in Civil Revision Application No.519 of 1980 decided on 15th July 1992 at Annexure-A to this application. This court appears to have found the approach of the Appellate Bench of the Small Causes Court with respect to the issue of the disclaimer of title to be not according to law. This court thereupon came to the conclusion that the impugned decision of the Appellate Bench in appeal could not be sustained in law. At that stage, at the instance of the then learned Advocate for the landlord, this court ordered remand of the matter to the Appellate Bench for "its decision afresh on the question whether or not the tenant can be said to have denied the title of the landlord with respect to the rented premises in the light of the averments made in para 3 of the written statement and the documentary as well as the oral evidence on record. It would be open to the appellate court to remand the case to the trial court for raising an issue in that regard and giving its finding thereon after recording evidence, if necessary. It would be more desirable if the parties think it fit to allow the notice correspondence annexed to the plaint to come on record. That would enable the court below to appreciate the averments made in para 3 of the written statement at Exh.14 on the record of the suit in the right perspective." The operative order in that regard is also quite clear. It reads:

"The matter is remanded to the Appellate Bench of  
the Small Causes Court at Ahmedabad for its  
decision afresh in appeal according to law in the

light of the observations made in this judgment on the issue of the disclaimer of title of the landlords to the rented premises on the part of the tenants after restoring the appeal in question to file." (Emphasis supplied).

4. The aforesaid extracted portion from the judgment of this court at Annexure-A to this application leaves no room for doubt that it was a restricted remand order and not an open remand order. It was not open to the learned Judges of the Appellate Bench to have construed it differently for the purpose of directing the parties to argue the appeal on all grounds thereby implying all grounds for recovery of possession by the landlord from the tenant. The approach of the learned Judges of the Appellate Bench as reflected in the impugned order is bereft of even common sense apart from all cannons of judicial discipline. It is not open to a subordinate court to misconstrue and to misread a judgment of this court and to interpret it in a twisted manner. Such an attempt on the part of the learned Judge or Judges of a subordinate court would amount to contempt of the superior court.

5. In this connection a reference deserves to be made to the ruling of the High Court of Karnataka in the case of K. VEERABASAPPA v. DISTRICT JUDGE, CHITRADURGA reported in AIR 1979 Karnataka at page 40. In that case also, construction of a restricted remand order was involved. In that context it has been held:

"Where a superior court has passed a restricted order of remand pertaining to a particular issue and none of the parties had urged for open remand it is not open to any of the parties or for any court to enlarge the scope of the remand order that too by a side window. If such a course is permitted, it is destructive of all judicial discipline and will strike at the very root of the efficacy and binding nature of an order of a superior court on the parties to a dispute and the necessity of a subordinate court to faithfully implement an order of the superior court."

I am in respectful agreement with the aforesaid principle of law stated in the aforesaid ruling of the High Court of Karnataka. It appears that the learned Judge of that High Court has relied on the binding ruling of the Supreme Court in the case of BHOPAL SUGAR INDUSTRIES LTD. v. INCOME TAX OFFICER, BHOPAL reported in AIR 1961

Supreme Court at page 182 for declaration of the aforesaid statement of law. The aforesaid principle of law found stated in the aforesaid ruling of the High Court of Karnataka is on all fours applicable in the present case.

6. Learned Advocate Shri Thakore for the respondents has urged that it transpires from the judgment of this court at Annexure-A to this application that on behalf of the landlord the learned Advocate pressed into service the ground of eviction based on section 13 (1) (1) of the Act and this court has not dealt with the submission in that regard urged on behalf of the landlord. It is true that in the judgment at Annexure-A to this application the submission urged on behalf of the landlord on the basis of section 13 (1) (1) of the Act has not been dealt with. That however cannot be a ground for treating the order of restricted remand to be the order of open remand. If it was found that a particular contention was taken note of in the judgment but was not found dealt with therein, the proper remedy should have been to approach this court for its review. It was not open to the landlord to construe the restricted remand order of this court differently on the basis of its not dealing with the submission urged on behalf of the landlord in the judgment at Annexure-A to this application. The attempt on the part of the learned Advocate for the landlord before the lower Appellate Court also deserves to be deprecated in view of the aforesaid statement of law appearing in the aforesaid ruling of the High Court of Karnataka.

7. In view of my aforesaid discussion, I am of the opinion that the learned Judges of the Appellate Bench of the Small Causes Court have travelled beyond their authority in giving direction to the parties appearing before them in Regular Civil Appeal No.379 of 1976 to argue the entire appeal on all grounds, implying thereby on all grounds for recovery of possession by the landlord from the tenant. That direction contained in the impugned order deserves to be quashed and set aside.

8. In the result, this revisional application is accepted to the aforesaid extent. The direction contained in the impugned order passed on 24th February 1994 below the application at Exhibit 68 in Regular Civil Appeal No.379 of 1976 to the effect that the entire appeal may be argued on all grounds is quashed and set aside. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

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